

OFFICIAL COMMENT



January 30, 2010 By Fax January 30, 2010

LSA Document #08-764 (Antidegradation)
 MaryAnn Stevens
 Rules Development Branch
 Office of Legal Counsel
 Indiana Department of Environmental Management
 100 North Senate Ave.
 MC 65-41
 Indianapolis, Indiana 46204-2251

Dear Ms. Stevens:

Please accept these comments on behalf of Valley Watch, Inc. an Indiana corporation whose purpose is to protect the public health and environment of the lower Ohio River Valley.

We also support as our own comments those filed on behalf of the Hoosier Environmental Council and the Environmental Law and Policy Center.

Our main concern with the proposed antidegradation rule as it is proposed are the voluminous "exemptions;" the proposed rule purports to grant. Exemptions should by definition be rare and be supported by sufficient evidence that it is either physically impractical for a source to comply or there are not controls or methods which can be used to control the resulting pollution.

In this proposed rule IDEM has offered no compelling evidence that the exemptions are justified or reasonable; essentially simply granting exemptions in an arbitrary and unnecessary manner.

Another aspect of the exemption section of the rule is the overly stringent requirement that at least twenty-five people are required to petition for exemption review in the ten digit watershed or within fifteen miles of where the loading will take place.

Valley Watch feels that twenty-five people places an undue burden on citizens who are only seeking to protect the waters of the area in which they may live. Such petitions should require no more than five petitioners and no requirement for residency since degrading the water quality in one area definitely impacts the water quality of downstream areas, too.

Further, the use of high unemployment, low income and poverty rates to justify exemptions is completely counter to the Executive Order 12898 signed by President Clinton requiring

agencies requiring agencies "to address environmental justice in minority and low income populations."

Specifically, that Order states in part, "1-101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, **each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States** and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Marian Islands."

Granting exemptions to allow increased pollution in an area simply due to it being low income is directly opposed to the whole idea behind the Executive Order in the first place.

Since IDEM is contractually bound and authorized by EPA to administer all federal law applying to water in the state, IDEM is therefore subject to the same provisions of the captioned Executive Order as if it were the USEPA.

In this case, adoption of these rules will render Executive Order 12898 moot and therefore claiming exemptions for areas because of any perceived economic issue is outside the provisions of the Executive Order and therefore outside the law.

Thank you for receiving these comments and we trust that IDEM will respond to them in a reasonable timeframe and with totality.

John Blair, president